IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 19TH MARCH 2007 / 28TH PHALGUNA 1928

OP.No. 13979 of 1998(L)

PETITIONER:

K.VENUGOPALAN,
ALASSENBAVA QUARTERS,
VIA.TANALUR,
MALAPPURAM 676 307.

BY ADV. SRI.M.P.KRISHNAN NAIR

RESPONDENTS:
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1. YAHIA, S/O.ALI,
VAKKAYIL HOUSE,
PACHATTIRI,
TIRUR TALUK.

2. K.ASHOKAN, S/O.RAMAN,
KALATHIPARAMB HOUSE,
ALATHIYOOR,
TIROOR TALUK,
MALAPPURAM DIST.

3. ORIENTAL INSURANCE COMPANY,
BRANCH OFFICE MANJERI,
MALAPPURAM DIST.

4. MOTOR ACCIDENTS CLAIMS TRIBUNAL,
MANJERI.

ADDL. RESPONDENT:

5. SRI.M.BHAGYANATH, ADVOCATE,
TIRUR.

(ADDL. RESPONDENT IS IMPLEADED VIDE ORDER DT.25.9.2006.)

R1 BY ADV. SRI.BABU S.NAIR
R3 BY ADV. SRI.P.V.JYOTHI PRASAD

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 19/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO.24679/1998 IN O.P. NO.13979/1998

DISMISSED:

19.3.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF AWARD IN O.P.(MV) NO.395/88 PASSED BY THE M.A.C.T. MANJERY ON 13.7.1990.

P2: TRUE COPY OF NOTICE IN E.P. NO.31/97 FROM THE M.A.C.T. MANJERI.

P3: TRUE COPY OF THE I.A. NO.3220/97 IN O.P.(MV) NO.395/88 FILED BY PETITIONER BEFORE THE M.A.C.T., MANJERI.

P4: TRUE COPY OF I.A. NO.3221/97 .DO.

P5: .DO. .DO. DT.28.4.1998.

TRUE COPY

P.A. TO JUDGE

C.N.RAMACHANDRAN NAIR,J.

O.P.NO. 13979 OF 1998

Dated this the 19th day of March, 2007

JUDGMENT

Petitioner is challenging Ext.P5 whereunder MACT rejected the petitioner's application to set aside exparte award. While the case of the petitioner is that he was declared exparte, counsel for the first respondent submitted that petitioner had engaged counsel and counsel had in fact represented the matter before the MACT. However, since vakalath was not given by petitioner, counsel did not appear. It is also seen from Ext.P5 that one advocate had orally represented that he would file vakalath on behalf of the petitioner, which was not done later. Even though there were lapses on the part of the petitioner in arranging appearance, and consequently award was passed exparte, it is not known whether the same had happened on account of petitioner's failure or on account of counsel's failure to represent the matter. In any case, having regard to the circumstances of the case, I feel one more opportunity can be given to the petitioner,but on conditions. Petitioner is directed to deposit a sum of Rs. 25,000/- before the fourth

respondent within two months from today. If payment is made as above, then exparte award will stand quashed with direction to the 4th respondent to issue notice to the petitioner, and dispose of the case after hearing the petitioner and other side within two months thereafter. I make it clear that service of notice should not lead to delay and if counsel is not available on record, notice should be served through messenger at the cost of petitioner and passing of award should not be delayed for any reason. The fourth respondent is directed to release payment to the first respondent from out of deposited amount subject to conditions which he may deem fit so that if petitioner is not found liable the amount should be repaid to the petitioner. If payment is not made as above, then O.P. will stand dismissed with direction to the fourth respondent to execute the award passed against the petitioner.

(C.N.RAMACHANDRAN NAIR)
Judge